

AUG 14 2019

DEPT. 86

ABENICIO CISNEROS, SBN 302765  
Law Offices of Abenicio Cisneros  
2443 Fillmore Street, #380-7379  
San Francisco, CA 94115  
707-653-0438  
acisneros@capublicrecordslaw.com

ANNA VON HERRMANN, SBN 301670  
Law Office of Anna von Herrmann  
2443 Fillmore Street #380-7379  
San Francisco, CA 94115  
415-779-5619  
anna@vonherrmannlegal.com

Attorneys for Petitioners and Plaintiffs

**FILED**

Superior Court of California  
County of Los Angeles

AUG 19 2019

Sherri R. Carter, Executive Officer/Clerk  
By Fernando Becerra, Jr., Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

KATHERINE MCNENNY and ADRIAN  
RISKIN,

Petitioners and Plaintiffs,

vs.

LOS ANGELES CHINATOWN BUSINESS  
COUNCIL, a non-profit corporation,

Respondent and Defendant.

) Case No.: BS174784

) **JUDGMENT GRANTING**  
) **PETITION FOR WRIT OF MANDATE**

) **DEPT: 86**

) **JUDGE: HON. MITCHELL L. BECKLOFF**

This matter was called for hearing on July 24, 2019 at 9:30 a.m. in Department 86. Petitioners were represented by counsel. Respondent did not appear. At that hearing, the Court issued its order, as set forth in the minute order and "ORDER GRANTING PETITION FOR WRIT OF MANDATE" (the "ORDER"), attached herein as EXHIBIT A.

For the reasons stated in the minute order and ORDER attached hereto as Exhibit A, IT IS  
HEREBY ORDERED, ADJUDGED, AND DECREED that:

1 1. The Petition for Writ of Mandate is GRANTED, as discussed in the ORDER.

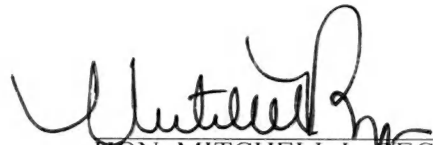
2 2. Respondent is ORDERED to produce within thirty (30) days all records responsive to  
3 Petitioners' public records requests, as described in the ORDER and the Petition for Writ of  
4 Mandate.

5 No later than thirty (30) days after notice of entry of the writ, Respondent shall file a return to the  
6 writ ~~stating the steps it has taken to comply with the writ.~~ *NRB*

7  
8 IT IS SO ORDERED.

9 DATED: \_\_\_\_\_, 2019

10 AUG 19 2019

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12 HON. MITCHELL L. BECKLOFF  
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# **EXHIBIT A**

**MCNENNY v. LOS ANGELES CHINATOWN BUSINESS COUNCIL**

Case Number: BS174784

Hearing Date: July 24, 2019

JUL 24 2019

Sherril R. Carter, Executive Officer/Clerk

By *[Signature]* Deputy  
Fernando Becerra, Jr.



**ORDER GRANTING PETITION FOR WRIT OF MANDATE**

Petitioners Katherine McNenny and Adrian Riskin (Petitioners) seek a writ of mandate under Code of Civil Procedure section 1085 and the California Public Records Act (CPRA) (Government Code sections 6250 *et seq.*) ordering Respondent Los Angeles Chinatown Business Council (Respondent BID) to produce documents pursuant to Petitioners' CPRA requests.

No opposition was filed.

The Petition is GRANTED.

**STATEMENT OF THE CASE**

On May 28, 2017, Petitioner McNenny submitted a CPRA request to Respondent BID, requesting two categories of records dated from January 1, 2017 to May 28, 2017: (1) all BID emails which contained an enumerated list of keywords related to the Skid Row Neighborhood Council election, and (2) all BID emails to and/or from certain named individuals involved in the Skid Row Neighborhood Council election. (Verified Pet., ¶ 13.) Respondent BID did not respond to Petitioner McNenny's request within 10 days with a determination of disclosability and an estimated date of production, as required by Government Code section 6253, subdivision (c). (Verified Pet., ¶ 13.) In fact, Petitioner received no response at all. (Verified Pet., ¶ 14.)

On March 23, 2018, Petitioner Riskin submitted a CPRA request to Respondent BID, requesting emails dated from January 1, 2017 through the date of the BID's compliance with the request that (1) were sent to/from/cc/bcc the BID's board or staff and various named individuals and domain names, and (2) were in possession of anyone on the BID's staff or board and contained the word "Skid." (Verified Pet., ¶ 20.) Respondent BID did not respond to Petitioner Riskin's request within 10 days with a determination of disclosability and an estimated date of production, as required by Government Code section 6253, subdivision (c). (Verified Pet., ¶ 20.) In fact, like Petitioner McNenny, Petitioner Riskin received no response at all. (Verified Pet., ¶ 21.)

On March 31, 2018, Petitioner Riskin submitted a second CPRA request to Respondent BID, seeking all emails between anyone on Respondent BID's board or staff and the email address michaelkfong@gmail.com that were dated from January 1, 2015 through the date of the BID's compliance with the request. (Verified Pet., ¶ 22.) Again, Respondent Bid provided no response at all. (Verified Pet., ¶¶ 22-23.)

## STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

“There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass’n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy . . . .” (*Pomona Police Officers’ Ass’n v. City of Pomona*, (1997) 58 Cal.App.4th 578, 583-84.)

“When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: ‘[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.’ [Citations.]” (*Pomona Police Officers’ Ass’n*, *supra*, 58 Cal.App.4th at 584)

## ANALYSIS

Petitioners request the court grant their Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief under the CPRA.

Pursuant to the CPRA (Government Code section 6250, *et seq.*), individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that “access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” (Gov. Code, § 6250; see also *County of Los Angeles v. Superior Court*, (2012) 211 Cal.App.4th 57, 63.) Government Code section 6253, subdivision (b) states:

“Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of

duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."

(Gov. Code § 6253, subd. (b).)

On July 3, 2019, the court granted Petitioners' Motion to Compel Respondent's verified responses to interrogatories, special interrogatories, and requests for production of documents, and for truth of matters in requests for admission to be deemed admitted. (Supp. Brief, Exs. A-B.) The motion was unopposed.

Based on the court granting Petitioner's motion to have the admissions deemed admitted, Respondent BID has now admitted that "all of the records that Petitioners requested are not properly subject to any of the exemptions under California Government Code § 6254." (Supp. Brief, Exs. A-B [RFA No. 14].)

CPRA establishes a basic rule requiring disclosure of public records upon request. (Gov. Code § 6253.) In general, it creates "a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency." (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323.) Therefore, every such record "must be disclosed unless a statutory exception is shown." (*Sander v. State Bar of California, supra*, 58 Cal.4th at 323.)

Respondent BID has not submitted any opposition or otherwise justified withholding the requested CPRA documents by asserting that any exemption applies.

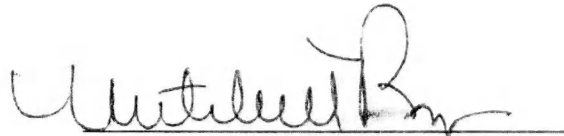
#### CONCLUSION

Based on the foregoing, the petition is GRANTED.

IT IS SO ORDERED.

July 24, 2019

DOCUMENTS TO BE  
PRODUCED W/IN 30 DAYS.



Hon. Mitchell Beckloff  
Judge of the Superior Court

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 86

**BS174784**

**KATHERINE MCNENNY ET AL VS LOS ANGELES  
CHINATOWN BUSINESS CO**

July 24, 2019

9:30 AM

Judge: Honorable Mitchell L. Beckloff  
Judicial Assistant: F. Becerra  
Courtroom Assistant: B. Hall

CSR: D. Van Dyke, CSR#10795  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Petitioner(s): Anna M. von Herrmann by Joseph Wangler

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Hearing on Petition for Writ of Mandate

The matter is called for hearing. There is no appearance by or on behalf of the Respondent

Counsel has seen and read the Court's written tentative ruling.

The Court adopts its tentative ruling, as modified, as the order of the Court and the tentative ruling is signed and filed this date and incorporated herein by reference as the order of the Court.

The petition for writ of mandate is granted for the reasons set forth in the Court's order.

Counsel for Petitioner is to prepare, serve and lodge (not eFile) the proposed judgment directly in Department 86 within ten days. The Court will hold the proposed judgment at least ten days for objections.

Counsel for Petitioner is to give notice.



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 301670 NAME: Anna von Herrmann FIRM NAME: Law Office of Anna von Herrmann STREET ADDRESS: 2443 Fillmore St. #380-7379 CITY: San Francisco STATE: CA ZIP CODE: 94115 TELEPHONE NO.: 415-779-5619 FAX NO.: E-MAIL ADDRESS: anna@vonherrmannlegal.com ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Stanley Mosk Courthouse	CASE NUMBER: <b>BS174784</b>
Plaintiff/Petitioner: Katherine McNenny and Adrian Riskin Defendant/Respondent: Los Angeles Chinatown Business Council	JUDICIAL OFFICER: <b>Hon. Mitchell L. Beckloff</b>
<b>PROOF OF SERVICE—CIVIL</b> Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT: <b>86</b>

**Do not use this form to show service of a summons and complaint or for electronic service.  
See USE OF THIS FORM on page 3.**

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:  
     2443 Fillmore St. #380-7379, San Francisco, CA 94115
3. ☐ The fax number from which I served the documents is (complete if service was by fax):
4. On (date): July 24, 2019                      I served the following documents (specify):  
     Proposed judgment granting petition for writ of mandate  
     ☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
  - a. Name of person served: George Yu, CEO of Los Angeles Chinatown Business Council
  - b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
 Business or residential address where person was served:  
     727 North Broadway, Suite 208, Los Angeles, CA 90012
  - c. ☐ (Complete if service was by fax.)  
 Fax number where person was served:
- ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

CASE NAME:

McNenny and Riskin v. Los Angeles Chinatown Business Council

CASE NUMBER:

BS174784

6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) ☒ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 13, 2019

Anna von Herrmann

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

#### DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

## INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

### USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

### GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

**You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.**